

## Remarks

In the present response, claims 15 and 16 are withdrawn per a previous restriction requirement. Claims 1, 4-14 and 17-27 are presented for examination.

### **Claim Rejections: 35 USC § 101**

Claims 12-14 and 17 are rejected under 35 USC § 101 as being directed to non-statutory subject matter.

These rejections are moot since the claims are amended to recite a preamble previously indicated as being allowed by the Federal Circuit. Specifically, these claims are amended to recite: "A tangible computer readable storage medium having instructions for causing a computer to execute a method, comprising:" {See *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995)}.

### **Claim Rejections: 35 USC § 102(e)**

Claims 1-2, 9-12, 17-20, and 22-27 are rejected under 35 USC § 102(e) as being anticipated by USPN 6,721,003 (Tsuruoka). These rejections are traversed.

The independent claims recite one or more elements not taught or even suggested in Tsuruoka. Some examples are provided below.

As one example, independent claim 1 recites regressively clustering pixels of an image with respect to a color model characterizing the image by regressing functions that correlate pixels having an attribute of similar value with respect to a first primary color of the color model and clustering pixels of the image into distinct groups based upon the regressed functions. These recitations were taken from dependent claims 2 and 3 (with dependent claim 3 being indicated as being allowed). Therefore, claim 1 and its dependent claims are allowable.

As one example, independent claim 12 recites generating a set of functions that correlate pixels of the image having an attribute of similar value relative to a color model, wherein each of the set of functions is based relative to a different primary color of the color model characterizing the image. Tsuruoka does not teach or suggest this element. Tsuruoka teaches scanning and extracting a region and then calculating constant terms (R-G, G-B, and R-B: see column 16, lines 22-26). Nowhere does Tsuruoka teach that

these regions or constant terms are functions that correlate to pixels “having an attribute of similar value relative to a color model” as recited in claim 12.

Anticipation under section 102 can be found only if a single reference shows exactly what is claimed (see *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985)). For at least these reasons, claim 12 and its dependent claims are not anticipated by Tsuruoka.

As one example, independent claim 18 recites regressing functions that correlate pixels of the image having an attribute of similar value relative to a color model, the functions being regressed with respect to different primary colors of the color model characterizing the image. Tsuruoka does not teach or suggest this element. Tsuruoka teaches scanning and extracting a region and then calculating constant terms (R-G, G-B, and R-B: see column 16, lines 22-26). Nowhere does Tsuruoka teach that these regions or constant terms are functions that correlate to pixels “having an attribute of similar value relative to a color model” as recited in claim 18.

For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference (see *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990)). For at least these reasons, claim 18 and its dependent claims are not anticipated by Tsuruoka.

As one example, independent claim 23 recites means for regressively clustering pixels of the image with respect to a color model characterizing the image to produce distinct segmentations of the image by regressing functions that correlate pixels having an attribute of similar value with respect to a first primary color of the color model and clustering pixels of the image into distinct groups based upon the regressed functions. These recitations were taken from dependent claims 2 and 3 (with dependent claim 3 being indicated as being allowed). Therefore, claim 23 and its dependent claims are allowable.

**Claim Rejections: 35 USC § 103(a)**

Claim 21 is rejected under 35 USC § 103(a) as being anticipated by USPN 6,721,003 (Tsuruoka). This rejection is traversed.

As explained above, Tsuruoka does not teach or suggest all of the elements of independent claim 18. Thus for at least the reasons given with respect to independent claim 18, dependent claim 21 is allowable over Tsuruoka.

### **CONCLUSION**

In view of the above, Applicants believe that all pending claims are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. 832-236-5529. In addition, all correspondence should continue to be directed to the following address:

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